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VIRGINIA LAW REGISTER.

EDITED BY GEORGE BRYAN

Issued Monthly at \$5 per Annum. Single Numbers, 50 Cents.

Communications with reference to CONTENTS should be addressed to the EDITOR at Richmond, Va.; BUSINESS communications to the PUBLISHERS.

In the death of Edmund Christian Minor, Judge of the Law and Equity Court of the City of Richmond, at Norwich, Connecticut, on the ninth day of September, 1903, in the fifty-ninth year of his age,

**Edmund
Christian Minor.**

we have to record the loss of an upright man, a faithful officer, a firm friend. For many years judge of the County Court of Henrico county, he was upon the creation of the Law and Equity Court of Richmond, in 1894, made its judge. In the course of his long judicial service he endeared himself to every member of his bar. Courtesy and consideration, qualities essential to the ideal judge, were in him ever abundant. One who had made a losing fight in his court after a hard battle rarely failed to receive a commendatory word. His nature was frank and generous, his manner upon the bench attentive and his capacity for the hard work of his court limited only by physical bounds. There can be no question that, as in the case of Judge James C. Lamb, of the Chancery Court of Richmond, the break-down which preceded death was the proximate result of heavy judicial labors.

His intercourse with the members of his bar was always unrestrained, but he had no favorites. The trend of his mind seemed to be in the direction of eliciting the facts by the simplest methods and applying to them the equity of the law; and attorney and client, whether successful or otherwise, always left his court impressed with the fairness of the man, his willingness to be convinced and his strong desire that only justice should be done. It was of such a man that Horace wrote:

Justum et tenacem propositi virum,

and the words are no less true of him who has left us.

At the request of the bar of the City of Richmond, Governor Montague has appointed John H. Ingram, Esq., of the Richmond Bar, as the successor of Judge Minor. Judge Ingram has been for a score of years Judge of the Corporation Court of Manchester, Richmond's sister city, but has all that time practised in the courts of Richmond. He took high place in the Constitutional Convention of 1901-2, and now assumes the duties of his new office with a well-earned reputation as a man, attorney, legislator and judge.

At the September, 1903, term of the Court of Appeals at Staunton, the number of cases on the docket was fifty-one, in twenty-one of which final judgments were rendered. Two were removed to Richmond and eighteen were continued for failure to print the records. This large percentage—over forty-three—suggests the suspicion that the failure to print might have been in some of the cases intentional and for the purpose of vexatious delay. The law as it now stands permits a case to remain for three years on the docket of the court at Staunton and Wytheville, at each of which places the court holds but one term annually. This cannot occur at Richmond, with its three terms a year. We understand that a correction of this abuse will be sought at the ensuing session of the legislature.

We are always in the field for leading articles from competent writers for publication in these pages. They add much to the value of a law journal, being read by all who are interested in the subject with a degree of attention proportioned to that interest, be it general or special. We solicit, therefore, from the members of the profession contributions to the common stock of law knowledge. We might safely leave the question of the structure of such articles to the experience and judgment of the writer, but a few words indicative of our ideas of what we desire in them may not be inappropriate.

Leading Articles
—Desiderata.

In the first place, let them be upon practical themes of present importance. The theory of existence of the REGISTER has ever been that of usefulness to the profession, more especially to the practitioner. Under its present plan of publishing all the opinions of the Court of Appeals of Virginia, its space for other kinds of matter

is necessarily limited. For detailed discussions of the civil or canon law, alleged solutions of the trust problem and historical and philosophical matter generally—all interesting enough under other circumstances—we have not sufficient space. This applies also to extended criticisms of the opinions of the courts. Their judgments, whether right or wrong, are the law, and petitions for rehearing must be addressed to them. If lengthy appeals or protests are to be taken to the profession or the public from the refusal to rehear, meritorious as at times they may be, and unsatisfying as they usually are—it must be through a channel other than the REGISTER. Such papers naturally invite defences of the opinion by other lawyers, and these, in turn, rejoinders, until the general reader loses sight of what was decided, and no result, other than confusion, is attained. It will be noted that we have spoken only of extended discussions of this nature. Concise reviews of decisions of interest will always be welcome and will promptly appear in our pages. The question with us is one of space.

Again, in the preparation of leading articles, we desire at least a modicum of originality—the writer's own views. It is not a difficult thing to-day, with the encyclopædias and digests supplied to us all upon easy terms by confiding publishers, to prepare a paper upon a given subject. The cases from the several courts for and against the proposition can be stated at greater or less length, and what may be called a skeleton of a good article will be the result. But far more valuable will the result be if, instead of stopping with the mining of the ore, the laborer will go on to refine the mineral and make it to bear the impression of his own personality by a well-considered expression of his opinion of the merits of the general question. It is true that this will subject his views to the risk of criticism, but he runs this risk in his practice every day. In a word, the judge or lawyer who leans too heavily upon the crutch of precedent suggests his own lameness, and, when precedent fails, necessarily halts with it, while he who uses it only as he observes the foundation and proper limitations of his theme and then devotes himself to the application of principles to facts, begets the forcefulness of style which is always incident to original thought. Upon this point we summarize: state the law as propounded by court or legislature, but add to it just comment of approval or condemnation, with succinct reasons therefor.

The history of current jurisprudence would not be complete without at least a mention of the acquittal at Lexington, South Carolina, on the 15th inst., of ex-Lieutenant Governor James H. Tillman upon an indictment for the murder in February last of N. G. Gonzales, editor of the *Columbia State*. **The Tillman Case.** While the verdict is a source of profound discouragement to all who wish to see the standard at which human life is held in the South materially elevated, it is only fair to state that this miscarriage of justice was the work of the jury and not the court. The law could not have been more clearly defined in England or New Jersey, in either of which jurisdictions murder is notably held to require more than "an apology to the jury." Further, the courts did their duty by refusing an application for bail, made with astounding confidence soon after the homicide. The prisoner put himself upon the country, with a result which showed that his faith in its precedents and traditions was not misplaced. A just inference from the verdict would seem to be that in South Carolina the fact that a man who, having previously publicly offended another, approaches him on the street with his hands in his overcoat pockets, the thumbs being at first exposed but later removed to the pockets, may be shot down by that other without fear of anything beyond the annoyance and expense of a trial and the inconvenience and loss of time incident to confinement in jail until acquittal.

In the Haywood case in North Carolina, a large measure of the responsibility for the prisoner's acquittal rests, if we are correctly informed by the daily press, with the trial judge, who is declared, among other rulings, to have rebuked the prosecution for endeavoring to prove malice and motive. Cases like these reduce manslaughter to man's laughter.

In this number we report two cases from courts of first instance in this state, which we consider of sufficient interest to call for presentation to the profession, the members of which would not otherwise be advised of them. We propose to continue this **Nisi Prius** course from time to time, especially in regard to cases **Decisions.** in which the Supreme Court of Appeals has, upon application, refused an appeal. In *Baker v. Watts*, reported in this number, the court expressly rules that the refusal of an appeal from a decree adjudicating the principles of a chancery cause is an affirm-

ance of such decree, and puts at rest the questions so adjudicated, and they cannot thereafter be reopened. We expect to report in a later issue a decision by Judge E. W. Saunders, in the Circuit Court of Campbell county, adjudging in proceedings under section 1698 of the Code for the appointment of a committee of an insane person, the necessity of notice to the insane person himself; also the case of *Commonwealth v. King*, from the Hustings Court of the City of Richmond, upon a conviction of bribery. In that case the lower court passed upon important questions, such as the competency of a grand juror under the Constitution of 1902; the propriety of a stenographer in the grand jury room; the degree of weight to be given to the testimony of an accomplice who admits perjury before the grand jury finding the indictment; and whether a question on direct examination by the attorney for the Commonwealth, so framed as to include the essential features of the indictment and capable of being met with the answer "Yes" or "No," is or is not a leading question. To the judgment upon these and other questions, a writ of error was refused, and the case, for the novelty of its facts in Virginia and the interesting character of its legal questions, should be reported. In Pennsylvania and other states, there are publications devoted entirely to the decisions of inferior courts, generally upon questions of practice, in which points of moment are passed upon which never reach the Supreme Court and yet are most acceptable to bench and bar. Of course when these cases are carried to a higher tribunal, which refuses to interfere, they possess an added weight, and the value of their publication is manifest.